IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/03/2004

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THE HONOURABLE MR. JUSTICE A. PACKIARAJ

Crl.R.C.No.503 of 2003

Small Industries Development
Bank of India
rep. By its General Manager
P.S.Krishnamoorthy ... Petitioner

-Vs-

1.Coimbatore Cement Products Pvt. Ltd.
Rep. By Managing Director P.U.Paulson

2.P.U.Paulson
3.K.M.Shankaran
4.K.Dhanapal

5.State represented by
Inspector of Police,
B-4, Race Course Police Station,
Coimbatore City : respondents

Revision filed against the order passed by the Judicial Magistrate No.III, Coimbatore in RCS No.670 of 2002 dated 08.11.2002 in Cr.No.170 of 1999.

!For petitioner : Ms.K.Sumathi

^For respondents : Mr.G.R.Edmund for respondents 1 and 2
Mr.G.Sundaram for 3rd respondent
Mr.A.Ramesn for M/s.Ram and Ram
for 4th respondent

Mr.G.Arul, Government Advocate
for 5th respondent

:O R D E R

This revision has been filed against the orders passed by the Judicial Magistrate No.III, Coimbatore in Cr.No.170 of 1999, accepting the refer notice filed by the Inspector of Police, B-4, Race Course Police Station, as further action dropped.

2.The petitioner, namely the defacto complainant, had given a complaint to the 5th respondent police for investigation against R-1 to R-4 for offence u/s 420 and 406 IPC. After the conclusion of investigation, as contemplated under the Cr.P.C, the Investigating Officer should file a final report before the court concerned which has jurisdiction. The final report may be in the nature of refer notice, that is to say, no offence is made out, or in the alternative, it may be a report disclosing the offence of which the respondent has committed. In the present case, the Investigating Officer has filed a report stating that no offence is made out.

3.However, the main grievance of the petitioner is that when the police have come to a conclusion that further action is likely to be dropped, it is mandatory on the part of the Magistrate to issue or give notice to the complainant that the police is likely to refer the matter and that it is open for the defacto complainant to take up the matter by other proceedings or in any manner which the law provides. This position has been dealt in Bagwant Vs. Commissioner of Police, reported in 1985 Crl.L.J. 1521. Hence when the matter has been dropped by the police officer, the Magistrate accepting the report and closing the First Information Report is illegal. Consequently, the petitioner prays that he should be given an opportunity to take up the issue again.

4.It is true that notice has not been served to the defacto complainant (petitioner) when refer notice was filed before the court and no notice was given by the Magistrate to the defacto complainant before he accepted the report, which apparently is illegal. This revision has to be necessarily allowed on that point.

5.The respondents 1 to 4, who are the accused, have been made parties in this revision. This revision having been filed out of time, a petition to condone the delay was filed and when the matter was admitted, notice was directed to be sent to the accused. But before the accused could receive notice from the court and enter appearance, the matter came to be listed and his Lordship Justice Malai. Subramanian has passed an order condoning the delay on the ground that since the accused has not come into the picture. i.e. to say the trial court has not issued process to the accused, they do not have any right of audience in the petition for condoning the delay. This order appears to be a perfect order.

6.But the contention of the learned counsel for the respondents is, having given notice, especially in a petition to condone delay, they are entitled to be heard. Since any petition that has been filed out of time, infringes the vested right of the sed. Though they may not have a right to argue on merits in relation to the case as such, they could always oppose the petition to condone delay.

7.I do agree with the contention of the learned counsel that it ought to have been done. However that in my opinion will not affect the order of Justice Malai.Subramanian in this case, since section 397 Cr.P.C as well as section 401 Cr.P.C contemplates that it is not only the aggrieved party who can bring to the notice of the court, of the illegality committed by the trial

court, but even suo motu it can be done. As a matter of fact, the Supreme Court in AIR 1976 SC 2205 Nadir Khan Vs. The State (Delhi Administration), wherein it has been held that even on the basis of paper report, the High Court could take up the issue and pass orders. Hence in the present case when there is apparent illegality committed by the Magistrate as well as the police officer, I do not think it necessary for me to go into the other details argued by the learned counsel for the respondents. Hence I set aside the order of the learned Magistrate accepting the final report and I direct him to give a copy of the petition and refer notice submitted by the Inspector of Police, to the petitioner, and pass orders after hearing it.

8.It will not be out of place for me to state that the police officer in his report has detailed the facts and stated that A-3 and A-4 are the Directors of the company and they are guarantors of the loan of the company to whom loan has been given. Further the company has paid 3 installments and failed to repay the balance. During investigation it was also found that the complainant has filed a civil case before the Debt Recovery Tribunal No.II, Chennai in O.A.No.1404 of 1998/ DRT II, Chennai.

9.Therefore, when the Inspector of Police has made such submissions, it would have been better if the Magistrate has passed a detailed order after considering the report.

10.According to the learned counsel for A-4, he ceased to be a director even two years prior to the date of taking of the complaint.

11.If such persons are to be prosecuted, it is the duty of the complainant and the Investigating Officer to find out the role each of the Directors played at the time of commission of the offence and prosecute them.

12.With this observation, the revision is allowed.

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Index: Yes
Internet: Yes

To

1.The Judicial Magistrate No.III, Coimbatore
2.-do- Through the C.J.M, Coimbatore
3.The Public Prosecutor, High Court, Madras
4.The Inspector of Police,
B-4 Race Course Police Station,
Coimbatore